

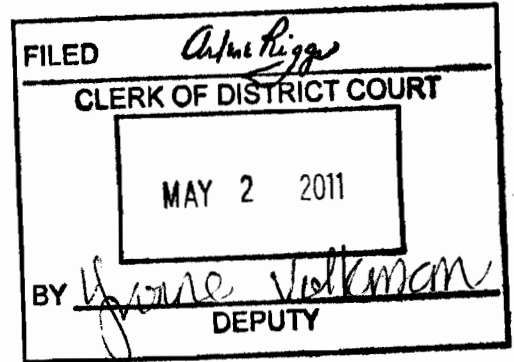
1 Christopher C. Voigt  
2 CROWLEY FLECK PLLP  
3 500 Transwestern Plaza II  
4 490 North 31st Street  
5 P. O. Box 2529  
6 Billings, MT 59103-2529  
7 Telephone: (406) 252-3441  
8 Facsimile: (406) 259-4159

9 Attorneys for Defendant

FILED

JAN 25 2012

PATRICK E. DUFFY CLERK  
BY Deputy Clerk



10 MONTANA SEVENTH JUDICIAL DISTRICT COURT, RICHLAND COUNTY

11 MICHAEL "MICK" DENOWH,  
12 PAUL J. DENOWH, and GARTNER-  
13 DENOWH ANGUS RANCH,

14 Plaintiffs,

15 vs.

16 XTO ENERGY, INC.,

17 Defendant.

) Cause No.: DV-11-53

) \_\_\_\_\_, District Judge

) **DEFENDANT'S ANSWER TO**  
) **COMPLAINT AND DEMAND FOR**  
) **JURY TRIAL**

18 COMES NOW the Defendant, XTO Energy, Inc. ("XTO") and for its answer to

19 Plaintiff's Complaint and Demand for Jury Trial admits, denies and asserts as follows:

20 **FACTS COMMON TO ALL COUNTS**

21 1. Upon information and belief, XTO admits the allegations contained in  
22 Paragraph 1 of the Complaint and Demand for Jury Trial.

2. XTO admits the allegations contained in Paragraph 2 of the Complaint and  
Demand for Jury Trial.

3. XTO lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 3 of the Complaint and Demand for Jury Trial and therefore denies the same.

4. XTO admits the allegations contained in Paragraph 4 of the Complaint and Demand for Jury Trial.

5. Paragraph 5 contains a legal conclusion to which no response is required. To the extent a response is required, XTO denies each and every allegation contained in Paragraph 5 of the Complaint and Demand for Jury Trial that is inconsistent with the governing law.

6. XTO admits the allegations contained in the first sentence of Paragraph 6 of the Complaint and Demand for Jury Trial. XTO denies the remaining allegations contained in Paragraph 6 of the Complaint and Demand for Jury Trial.

7. XTO denies the allegations contained in Paragraph 7 of the Complaint and Demand for Jury Trial.

**COUNT ONE**

8. In response to paragraph 8, the referenced statute speaks for itself. To the extent Paragraph 8 contains any allegations, those allegations are denied.

9. XTO denies the allegations contained in Paragraph 9 of the Complaint and Demand for Jury Trial.

10. XTO denies the allegations contained in Paragraph 10 of the Complaint and Demand for Jury Trial.

11. XTO denies the allegations contained in Paragraph 11 of the Complaint and Demand for Jury Trial.

**AFFIRMATIVE DEFENSES**

1. Plaintiff's claims are barred by:

- a. Estoppel,
- b. Statute of limitations,
- c. XTO's lease and reasonable surface use rights,
- d. XTO's compliance with applicable statutes and regulations, and
- e. Other matters constituting an avoidance or affirmative defense yet to be determined.

2. A ruling that Plaintiffs are entitled to damages exceeding the full fair market value of the affected real property would render the Montana Surface Damage and Disruption Compensation Act unconstitutional under:

- a. The U.S. Constitution:
  - i. Just Compensation Clause of the Fifth Amendment, as applied through the Fourteenth Amendment; and
  - ii. Equal Protection Clause of the Fourteenth Amendment; and
- b. The Montana Constitution:
  - i. Art. II, § 17; and
  - ii. Article II, § 29.

XTO demands judgment:

- a. Against Plaintiff on all claims.

1           b.     For costs and attorneys fees allowed by law.

2           c.     For other relief the Court deems just and proper.

3     Dated this 29<sup>th</sup> day of April, 2011.

4                                   CROWLEY FLECK PLLP

5                                   By  \_\_\_\_\_

6                                   Christopher C. Voigt

7                                   P. O. Box 2529

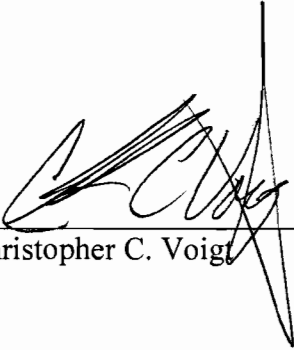
8                                   Billings, MT 59103-2529

9                                   Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I, Christopher C. Voigt, one of the attorneys for the law firm of Crowley Fleck PLLP, hereby certify that on the 29<sup>th</sup> day of April, 2011, I mailed a true and correct copy of the foregoing document, postage prepaid, to the following:

A. Clifford Edwards  
Philip McGrady  
Edwards, Frickle & Culver  
1601 Lewis Avenue, Suite 206  
P.O. Box 20039  
Billings, MT 59104-0039

  
\_\_\_\_\_  
Christopher C. Voigt